

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 127 of 2013

Dated: 17th April, 2014

Present: **Hon'ble Mr. Rakesh Nath, Technical Member**
Hon'ble Mr. Justice Surendra Kumar, Judicial Member

IN THE MATTER OF

M/s Lafarge India Pvt. Ltd.

.... **Petitioner/
Appellant**

VERSUS

**Chhattisgarh State Electricity Regulatory
Commission & Ors.**

.... **Respondents**

Counsel for the Appellant(s)

... Mr. Praveen Kumar
Mr. S.C. Sood, Rep.

Counsel for the Respondent(s)

... Mr. C.K. Rai for R-1
Ms. Suparna Srivastava for R-2

ORDER

PER HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

The matter in controversy before us is as to whether Limitation Act, 1963 would be applicable to the matters pending before the State Electricity Regulatory Commissions and the Central Electricity Regulatory Commission.

This Tribunal's Bench consisting of Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson and Hon'ble Mr. Rakesh Nath, Technical Member while deciding the Appeal No. 12 of 2010 and 116 of 2010 vide judgment dated 7.3.2011 reported in 2011 ELR (APTEL) 0458 held in para 50 thereof as under:

"50. SUMMARY OF OUR FINDINGS:

(1) It is settled law that the Limitation Act would apply only to Courts and not to the other bodies such as quasi-judicial Authorities as held by the Hon'ble Supreme Court. Therefore, the contention of the Appellant that the claim made by the Respondent before the State Commission which is a quasi judicial authority was barred by limitation does not merit consideration. Even with regard to the contention, that there was a delay and laches on the part of the Respondents in approaching the State Commission for making the claim for payment of arrears it is to be held that both the Respondents had consistently claimed their

rates as well as escalated rates as per the Power Purchase Agreement (PPA) and they had regularly sent the invoices mentioning the PPA rates and the Appellant admittedly had received the same but did not choose to either to raise the objection or to return those invoices to the Respondents and only when the Appellant rejected their claims, the Respondents approached the Commission and sought the relief. Under those circumstances the plea that there was delay and laches on the part of the Respondents has got to be rejected. Accordingly the same is rejected.

(II)

Accordingly, both the aforesaid appeals were dismissed inter-alia, on the ground of limitation upholding the views of the Tamil Nadu Electricity Regulatory Commission. Tamil Nadu Electricity Regulatory Commission took the view that the Limitation Act would not apply to the present proceedings. In the Appeal No. 12 of 2010 and 116 of 2010 decided by a common judgment dated 7.3.2011 by this Tribunal, this Tribunal completely had agreed with the State Commission's finding that the Limitation Act, 1963 does not apply to the proceedings before the State Regulatory Commission. This Tribunal also adopted the same principle to hold that the Limitation Act would apply only to Courts and not to the other bodies such as quasi-judicial authorities like this Tribunal.

Contrary to the view adopted by this Tribunal in the aforesaid Appeals namely, 12 of 2010 and 116 of 2010 in the judgment dated 7.3.2011, this Tribunal consisting of Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson and Hon'ble Mr. H.L. Bajaj, Technical Member, in Appeal No. 77 of 2009 in its judgment dated 22.2.2010 in the matter Gujarat Urja Vikas Nigam Ltd. vs. Essar Power Ltd. reported at 2010 ELR (APTEL) 0359 in paras 25 & 26 has observed as under:

"25. Further, the decisions cited by the learned Counsel for the Appellant under Article 137 of the Limitation Act would apply only to the Application and not to the suit. The petition in question filed before the State Commission being one in the nature of a suit would attract Article 55 and as per the same, the petition is barred by time with respect to the claims made by the Appellant, with regard to the period prior to three years prior to the filing of the petition on the alleged wrong allocation of power and deemed generation incentive.

26. In view of the discussions made in the foregoing paragraphs we feel that there is no merit in this Appeal. In our considered opinion, the State Commission has given a clear and categorical finding with reference to the period of limitation and has rightly held that the Appellant's claim against the EPL for any period up to 14th September, 2002, i.e. three years period prior to filing of the petition are barred by time except to the extent of Rs.64 crores paid by the EPL to the Appellant pursuant to the full and final settlement of 11 claims for the period from 1998 up to September 2004. In this context, we would like to mention that in regard to the full and final settlement, we would make further discussion in the other Appeal."

In the aforesaid judgment dated 22.2.2010, this Tribunal has endorsed and reaffirmed the State Commission's view that the Appellant's claim having being filed beyond the period of three years was barred by time.

The Bench of this Tribunal consisting of Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson and Hon'ble Mr. Rakesh Nath, Technical Member in Appeal No.240 of 2013 in the case of Tamil Nadu Generation and Distribution Corporation Ltd. vs. M/s Lanco Tanjore Power Company Ltd. & Anr. vide its recently pronounced judgment dated 3.4.2014 while dismissing the Appeal and affirmed the State Commission's order, held that claim of the Appellant is barred by limitation. The State Commission took the view that the Limitation Act is applicable to the proceedings before the State Commission and held the Appellant's claim barred by the limitation.

Thus, after hearing the learned counsel for the rival parties on the point of applicability of Limitation Act to the proceedings before the State Commission or Central Electricity Regulatory Commission and in view of the above noted contrary judgment, which adopted different and contradictory views on the said point, we deem it proper to refer this matter to the Larger Bench so as to settle the controversy finally and giving an end to the present impasse because the learned counsel are feeling uncomfortable with the existence of contradictory propositions of law laid down by this Tribunal. Accordingly, this matter is a fit matter to be referred to Larger Bench.

Registry of this Tribunal is directed to put up this order before the Hon'ble Chairperson for passing suitable orders and for constituting a Full Bench.

Pronounced in open Court on this 17th day of April, 2014.

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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